SUPREME COURT OF THE UNITED STATES.

No. ~~404.~~ 248.

THE UNITED STATES, PLAINTIFFS,

vs.

JAMES McDEARMAN.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED JANUARY 4, 1871.

Dec 1871

1 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of Wes' Tennessee, was begun & held at the federal court-rooms, in the city of Memphis, on the fourth Monday in, it being the 28th day of, November, A. D. 1870, being the time and place designated by law for the holding of said court.

Present and presiding, the Hon. H. H. Emmons, judge of the United States circuit court for the sixth circuit thereof; and the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present also, A. G. Mitchell, clerk.

And on Wednesday, the 21st day of December, A. D. 1870, the same being one of the days of said term, the following proceedings were had and entered of record in said court, to wit:

THE UNITED STATES *vs.* JAMES A. MCDEARMAN. } No. 1030. Quo warranto.

State of the pleadings.

2 This is an information quo warranto, brought by H. E. Hudson, U. S. att'y for the district of West Tennessee, for and on behalf of the United States, in pursuance of the act of Congress, approved May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes," against the defendant James A. McDearman, who, as alleged, holds the office of clerk and master of the chancery court in and for the county of Gibson, State of Tennessee, western district of Tennessee, contrary to the provisions of section 3rd, of the fourteenth article of amendment to the Constitution of the United States.

Said information alleges substantially as follows:

That said James A. McDearman, for the space of ten days now last past, without any legal grant, warrant, or right whatsoever, hath used and exercised and still doth use and exercise the office of clerk & master of the chancery court for the county of Gibson, State of Tennessee, district of West Tennessee, and for and during all the time last

3 above mentioned, without any legal grant, warrant, or right, hath claimed and still claims to be said clerk & master, and to use & enjoy the privileges & franchises appertaining to the same. That he, the said James A. McDearman, before the taking & using the office aforesaid, heretofore, to wit, on the 10th day of July, 1858, took an oath as a certain executive officer, to wit, as county-court clerk of Gibson County, Tennessee, to support the Constitution of the United States; that thereafter and before the taking & using the office first above mentioned, to wit, on the first day of January, 1862, he, the said James A. McDearman, voluntarily gave aid and comfort to persons in insurrection and rebellion against the United States, and did voluntarily join said armed persons, and arm himself and wage & carry on rebellion and insurrection against the United States.

To which said information defendant pleads substantially as follows:

That he now holds and has held said office during the time stated in said information, but that before the exhibiting of said informa-

4 tion against him, and before the adoption of the 3d section of the fourteenth article of amendment of the Constitution of the

United States, and before the passage of the said act of Congress, approved May 31, 1870, to wit, in Dec'r, 1865, he was duly appointed to said office of clerk and master by the chancellor of said chancery court, who, under and by virtue of the laws and constitution of the State of Tennessee, had power and authority to appoint a clerk and master; and that by virtue of said power and authority he, the said chancellor, did appoint said defendant to said office of clerk and master for the term of six years; that in pursuance of said appointment, said defendant was duly inducted into the said office of clerk and master, and took the oaths and executed the bonds required of him by the laws and constitution of the State of Tennessee; that by virtue of said appointment and qualification he hath hitherto held, and still holds, said office.

To this plea the plaintiff demurs, and the defendant joins in demurrer.

5 This cause coming on to be argued at this term, it occurred as a question, whether sec. 3 of the fourteenth article of amendment to the Constitution of the United States, and the fourteenth sec. of the said act of May 31, 1870, apply to the case of a State officer who was appointed, qualified, and inducted into office before the adoption of the said 14th article of amendment, and before the passage of said act of May 31, 1870. On which question the opinions of the judges were opposed.

Whereupon, on motion of plaintiffs, the said United States, by H. E. Hudson, att'y as aforesaid, that the point on which the disagreement hath happened, may, during the term, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court to be finally decided; it is ordered that the foregoing state of the pleadings and the facts stated therein, which are made under the direction of the judges, be certified according to the request of the plaintiff, by said H. E. Hudson, att'y, and the law in such cases made & provided.

6 UNITED STATES OF AMERICA,
District of West Tennessee:

I, Abram S. Mitchell, clerk of the United States circuit court for the district of West Tennessee, do hereby certify that the foregoing five pages contain a full and true copy of the proceedings of said court on the division of opinion of the judges thereof in the cause therein stated.

Witness my hand and the seal of said circuit court this 27th day of December, A. D. 1870, and of the independence of the United States the 95th year.

[SEAL.] A. S. MITCHELL, *Clerk.*

(Indorsement on cover:) No. 464. The United States, plaintiffs, vs. James McDearman. Certificate of division. W. Tennessee C. C. U. S. Filed 4th January, 1871.